



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 26 2006

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Roland Dunteman
Vice President
Du-Kane Asphalt Company
600 S Lombard Road
Addison, Illinois 60101

Dear Mr Dunteman

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) that resolves Du-Kane Asphalt Company (Du-Kane) CAA Docket No CAA-05-2006-0023 As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 30 2006

Pursuant to paragraph 25 of the CAFO, Du-Kane must pay the \$11,000 civil penalty within 30 days of the date the CAFO was filed, MAY 30 2006 The check must display the case docket number, CAA-05-2006-0023, and the billing document number, 2750603A002

Please direct any questions regarding this case to Tom Krueger, Associate Regional Counsel, (312) 886-0562

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

Cc Julie Armitage, Acting Manager
Compliance and Enforcement Section Bureau of Air
Illinois Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. <u>CAA-05-2006-0023</u>
)	
Du-Kane Asphalt Company)	Proceeding to Assess a Civil
Addison, IL,)	Penalty under Section 113(d)
)	of the Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d) O
)	

Consent Agreement and Final Order

Preliminary Statement

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1 This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U S C § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C F R Part 22 (2004)

2 Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U S EPA)

3 Respondent is Du-Kane Asphalt Company (Du-Kane), a corporation doing business in Addison, Illinois

4 Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO) 40 C F R § 22.13(b) (2004)

5 The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest

6 Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO

Jurisdiction and Waiver of Right to Hearing

7 Du-Kane admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO

8 Du-Kane waives its right to request a hearing as provided at 40 C F R § 22 15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO

Statutory and Regulatory Background

9 Section 111(e) of the Act, 42 U S C § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a New Source Performance Standards (NSPS) after the effective date of the applicable NSPS to such source

10 The NSPS regulations promulgated for Hot Mix Asphalt Facilities (codified at 40 C F R Part 60, Subpart I) apply to any affected facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements

11 40 C F R § 60 90(b) provides that the NSPS for Hot Mix Asphalt Facilities applies to any affected facility that commences construction or operation after June 11, 1973

12 40 C F R § 60 92(a)(2) mandates that no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which exhibit 20 percent opacity, or greater

13 40 C F R § 60 11(d) requires that at all times owners and operators shall maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions

14 The Administrator of U S EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U S C § 7413(d)(1), and 40 C F R Part 19 (2004)

Factual Allegations

15 The Du-Kane facility manufactures bituminous asphalt for use in paving at a facility that commenced construction or operation after June 11, 1973

16 Du-Kane is located at 600 S Lombard Road, Addison, Illinois Other listed addresses for the facility include 555 S State Route 53, 555 S Rohlwing Road and Donahue and Lemont Roads, all in Addison, Illinois

17 Du-Kane is subject to a Lifetime Operating Permit, I D Number 043005AAM, issued by the Illinois Environmental Protection Agency (IEPA) on June 7, 2001

18 Du-Kane's Lifetime Operating Permit notes that Du-Kane is subject to the NSPS

19 Asphalt is manufactured at the facility via a natural gas-fired drum-mix process with batch-mode capability

20 A baghouse is the air pollution control device used at Du-Kane

21 On October 27, 2005, Du-Kane was operating its asphalt plant

22 On October 27, 2005, a U S EPA certified inspector (inspector) conducted a Method 9 test at the Du-Kane facility in response to a citizen complaint regarding visible emissions Readings were conducted from 9 19 to 9 49 A M

Alleged Violations

23 On October 27, 2005, the inspector observed emissions at Du-Kane exceeding 20 percent opacity, in violation of 40 C F R § 60 92(a)(2) Six-minute averages taken of the 120 consecutive readings resulted in 30 minutes of violation

Visible Emission Violations

Date	Observation Period	6-Minute Average Opacity Observed
10/27/05	9 19 to 9 25 AM	74 6%
	9 25 to 9 31 AM	82 9%
	9 31 to 9 37 AM	80 8%
	9 37 to 9 43 AM	82 7%
	9 43 to 9 49 AM	85 2%
Total observation time - 30 minutes (9 19 to 9 49 A M)		
Total time exceeding standard from 9 19 to 9 49 A M - 30 minutes		

24 By exceeding the NSPS 20% opacity limit by 54 6 - 65 2%, as recorded on October 27, 2005, the facility also violated 40

C F R § 60 11(d) by failing to maintain and operate pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions

25 On December 12, 2005 U S EPA issued a Finding of Violation (FOV) to Du-Kane The FOV alleges that Du-Kane violated Section 111(e) of the Act, 42 U S C § 7411(e), and applicable regulations set forth in the NSPS General Provisions and Standards of Performance for Hot Mix Asphalt Facilities at 40 C F R §§ 60 11(d) and 60 92(a)(2) respectively

Civil Penalty

26 Based on analysis of the factors specified in Section 113(e) of the Act, 42 U S C § 7413(e), U S EPA and Du-Kane agree that an appropriate civil penalty to settle this action is \$11,000

27 Du-Kane must pay the \$11,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO

28 Du-Kane must send the check to

U S Environmental Protection Agency
Region 5
P O Box 70753
Chicago, Illinois 60673

29 A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment Respondent must write the case docket number and the billing document number on the face of the check Respondent must send copies of the check and transmittal letter to

Attn Regional Hearing Clerk, (E-19J)
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604-3511

Attn Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604-3511

Tom Krueger, (C-14J)
Office of Regional Counsel
U S Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois 60604-3511

30 This civil penalty is not deductible for federal tax purposes

31 If Du-Kane does not pay timely the civil penalty, U S EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U S C § 7413(d)(5) The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action

32 Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U S C § 3717 Du-Kane will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due Du-Kane will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U S C § 7413(d)(5) This nonpayment penalty will be 10 percent of the aggregate amount of the

outstanding penalties and nonpayment penalties accrued from the beginning of the quarter

Final Statement

33 This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Finding of Violation

34 Except as expressly provided in this CAFO, this CAFO does not affect the right of U S EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law

35 This CAFO does not affect Du-Kane's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations Except as provided in paragraph 33 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant

36 Du-Kane certifies that it is complying fully with the NSPS regulations promulgated for Hot Mix Asphalt Facilities

37 This CAFO constitutes an "enforcement response" as that term is used in "U S EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Du-Kane's "full compliance history" under Section 113(e) of the Act, 42 U S C § 7413(e)

38 The terms of this CAFO bind Du-Kane, and its successors, and assigns

39 Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for

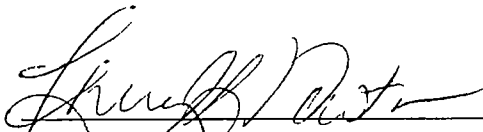
the party whom he or she represents and to bind that party to its terms

40 Each party agrees to bear its own costs and attorneys' fees in this action

41 This CAFO constitutes the entire agreement between the parties

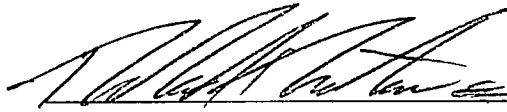
U.S. Environmental Protection Agency, Complainant

5/25/06
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency,
Region 5 (A-18J)

Du-Kane Asphalt Company, Respondent

5-15-2006
Date


Roland Dunteman, Vice President
Du-Kane Asphalt Company

CAA-05-2006-0023

CONSENT AGREEMENT AND FINAL ORDER

Du-Kane Asphalt Company

Docket No. CAA-05-2006-0023

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk This final order disposes of this proceeding pursuant to 40 C F R § 22.18

5/26/06
Date

Bharat Mathur
Bharat Mathur

Acting Regional Administrator

U S Environmental Protection Agency,
Region 5

77 West Jackson Boulevard

Chicago, Illinois 60604-3511

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REGION 5
U.S. ENVIRONMENTAL PROTECTION AGENCY

Protecting the environment is everyone's responsibility

Help EPA fight pollution by reporting possible harmful environmental activity
To do so, visit EPA's website at <http://www.epa.gov/compliance/complaints/index.html>

CONSENT AGREEMENT AND FINAL ORDER
Du-Kane Asphalt Company, Addison, Illinois
Docket No. CAA-05-2006-0023

CERTIFICATE OF SERVICE

I, Betty Williams certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Du-Kane Asphalt Company by placing it in the custody of the United States Postal Service addressed as follows

Roland Dunteman, Vice President
Du-Kane Asphalt Company
600 S Lombard Road
Addison, Illinois 60101

I also certify that a copy of the CAFO was sent by first class mail to

Julie K Armitage, Acting Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 30th day of May, 2006

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US ENVIRONMENTAL AGENCY
REGION V

Betty Williams

Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER

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